

BRB Nos. 05-0903 BLA  
and 05-0903 BLA-A

BRANSON COLEMAN )  
 )  
 Claimant-Petitioner )  
 Cross-Respondent )  
 )  
 v. )  
 )  
 IKE COAL COMPANY, INCORPORATED ) DATE ISSUED: 07/28/2006  
 )  
 and )  
 )  
 KENTUCKY COAL PRODUCERS SELF- )  
 INSURANCE FUND )  
 )  
 Employer/Carrier-Respondents )  
 Cross-Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens Law Center, Incorporated), Prestonsburg, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd), Washington, D.C., for employer/carrier.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-5635) of Administrative Law Judge Janice K. Bullard denying benefits on a claim<sup>1</sup> filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Employer has filed a cross-appeal. The administrative law judge initially credited claimant with 27.5 years of qualifying coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and that the objective evidence supported employer's stipulation that claimant suffers from a totally disabling respiratory impairment. Next, the administrative law judge considered the relevant medical opinion evidence and found that claimant failed to establish that his total respiratory disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in not giving substantial weight to the medical opinion of Dr. Mettu, that claimant's disability was due to pneumoconiosis, as he was both a highly qualified pulmonary specialist and claimant's treating physician and his opinion was supported by objective evidence. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) as party-in-interest, has not filed a brief in response to claimant's appeal.

In addition, employer has filed a cross-appeal. Employer urges the Board to affirm the administrative law judge's decision denying benefits, thus rendering the issues raised in its cross-appeal moot. Alternatively, employer contends that the case should be remanded to the administrative law judge for proper consideration of the relevant evidence in the event the Board declines to affirm the denial of benefits. Specifically, employer contends that the administrative law judge erred in: finding that the claim was timely filed pursuant to Section 725.308; weighing the x-ray evidence pursuant to Section 718.202(a)(1); and weighing the medical opinions of Drs. Westerfield and Fino on the issues of the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and disability causation pursuant to Section 718.204(c). Claimant responds, urging the Board to deny employer's cross-appeal because the administrative law judge neither erred in

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<sup>1</sup> Claimant filed his application for benefits on August 26, 2002. Director's Exhibit 2.

finding that the claim was timely filed nor in weighing the x-ray evidence or the opinions of Drs. Westerfield and Fino. The Director has filed a response brief in employer's cross-appeal, addressing only the timeliness issue and arguing that the administrative law judge properly found that employer failed to rebut the presumption that claimant timely filed his claim for black lung benefits pursuant to Section 725.308(c). Finally, employer filed a reply brief responding to both claimant's and the Director's response briefs, reiterating its position that the denial of benefits must be affirmed, or alternatively, that the case must be remanded for the administrative law judge to reconsider the timeliness issue as well as all the x-ray and medical opinion evidence of record.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In challenging the administrative law judge's disability causation determination pursuant to Section 718.204(c), claimant argues that the administrative law judge erred in failing to accord substantial weight to the opinion of Dr. Mettu, a highly qualified pulmonary specialist and claimant's treating physician, since Dr. Mettu set forth the clinical findings, observations, medical and employment histories, and other objective data upon which he based his diagnosis, and thereby, rendered a well-reasoned and documented opinion. Claimant further contends that the administrative law judge was unduly strict in her evaluation of Dr. Mettu's opinion because the evidence was only required to establish that coal mine dust exposure was a significant cause of disability, and not to eliminate any other causes of disability. *See* Administrative Procedure Act (APA), 5 U.S.C. §556(d), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Additionally, claimant contends that the administrative law judge's discrediting of Dr. Mettu's opinion was illogical because she credited Dr. Mettu's opinion that claimant had pneumoconiosis, finding it "the best documented and reasoned medical opinion of record." *See* Claimant's Petition for Review and Brief at 11, *citing* Decision and Order at 14.

In finding that the opinion of Dr. Mettu failed to carry claimant's burden of establishing disability causation, the administrative law judge concluded that she could not accord the opinion substantial weight because Dr. Mettu "did not thoroughly account for [c]laimant's smoking history." Decision and Order at 16. The administrative law judge noted that while Dr. Mettu's opinion was based on a positive x-ray interpretation and claimant's coal mine employment, the doctor did not indicate how he was able to find that claimant's disability was related solely to pneumoconiosis when, in addition to a thirty year history of coal mine employment, the doctor also noted that claimant smoked one pack of cigarettes a day from the time he was seventeen until he was approximately

sixty-one, a period of forty-four years. The administrative law judge found that Dr. Mettu did not indicate whether he considered claimant's smoking history when he found that claimant had pneumoconiosis nor did he address whether smoking would have affected claimant's respiratory condition. Decision and Order at 16.

The Act, the regulations, and the APA mandate that claimants bear the ultimate burden of persuasion in establishing all requisite elements of entitlement in black lung claims by a preponderance of the evidence, *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vac'd sub nom., Consolidated Coal Co. v. Skukan*, 114 S. Ct. 2732 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995). We disagree with claimant that the administrative law judge required Dr. Mettu to address other potential causes of claimant's disability. Rather, the administrative law judge found that the probative value of Dr. Mettu's opinion was diminished because the doctor did not fully address claimant's lengthy smoking history. This was rational. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Gorzalka v. Big Horn Coal Co.*, 16 BLR 1-48, 1-52 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Gouge v. Director, OWCP*, 8 BLR 1-307 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985). Decision and Order at 16; Director's Exhibit 10.

Likewise, we reject claimant's contention that it was "illogical" for the administrative law judge to discredit the opinion of Dr. Mettu's opinion with respect to the cause of disability after having credited it as the existence of pneumoconiosis. *Drummond Coal Co. v. Freeman*, 17 F.3d 361, 366 (11th Cir. 1994). "[A] doctor's opinion as to [pneumoconiosis] may be well supported by facts, documents, and reasons, while the same doctor's opinion as to causation may not be so well supported." *Luketich v. Director, OWCP*, 8 BLR 1-477, 1-480 n.3 (1986)(a medical opinion may be reasoned under one provision of the regulations, yet not reasoned under another provision). Accordingly, although the administrative law judge found that Dr. Mettu rendered "the best documented and reasoned medical opinion of record regarding the existence of pneumoconiosis," [emphasis added], the administrative law judge reasonably decline to accord Dr. Mettu's opinion dispositive weight on the issue of disability causation. See *Freeman*, 17 F.3d at 366 ("An ALJ need not find that a medical opinion is either wholly reliable or wholly unreliable."); Decision and Order at 14 [emphasis added]. Hence, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of affirmatively establishing that his totally disabling respiratory impairment was

due to pneumoconiosis by a preponderance of the evidence pursuant to Section 718.204(c). *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (crediting of physician's report is credibility determination within purview of administrative law judge); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201, 1-204 (1986) (claimant bears burden of establishing total disability due to pneumoconiosis by preponderance of evidence); *Gouge*, 8 BLR at 1-309; *Maypray*, 7 BLR at 1-686; Decision and Order at 16.

Based on the foregoing, we affirm the administrative law judge's determination that claimant failed to establish disability causation pursuant to Section 718.204(c), as this finding is rational, contains no reversible error, and is supported by substantial evidence. Because claimant has failed to satisfy his burden to establish total disability due to pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that entitlement to benefits is precluded. *See* 20 C.F.R. §718.204(c); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).<sup>2</sup>

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<sup>2</sup> Our affirmance of the administrative law judge's denial of benefits in this case obviates the necessity to address the merits of employer's cross-appeal.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge